against the original debtor but exists independently of such right. Thus in the case of a promise by a third party to pay a debt, the creditor has rights against the new promisor which are not affected by defenses existing between the original debtor and himself, such as usury, *Log Cabin, etc., Ass'n* v. *Gross* (1889) 71 Md. 456, 18 Atl. 896; *Jones* v. *Insurance Co.* (1884) 40 Oh. St. 583; *Hartley* v. *Harrison* (1861) 24 N. Y. 170; coverture, *Comstock* v. *Smith* (1873) 26 Mich. 306; see *Kennedy* v. *Brown* (1878) 61 Ala. 296; failure or want of consideration, *Crawford* v. *Edwards* (1876) 33 Mich. 354; *Freeman* v. *Auld* (1870) 44 N. Y. 50; or the Statute of Limitations. *Kuhl* v. *Chicago etc. Ry.* (1898) 101 Wis. 42, 77 N. W. 155; *Daniels* v. *Johnson* (1900) 129 Cal. 415, 61 Pac. 1107; see *Dwinnell* v. *McKibben* (1895) 93 Iowa 331, 61 N. W. 985. But the fact that the beneficiary's right against the new obligor is distinct from his right against the original debtor, does not mean that it is independent of the terms of the contract entered into by the new obligor, with the promisee. His action of assumpsit exists by virtue of that contract. If it contains conditions, the beneficiary must show the happening thereof, *Rusell* v. *Western Union Tel. Co.* (1896) 57 Kan. 230, 45 Pac. 598; *Fenn* v. *The Union etc. Co.* (1896) 48 La. Ann. 541, 19 So. 623; *Gill & McMahon* v. *Weller* (1879) 52 Md. 8; see *East* v. *Insurance Ass'n* (1899) 76 Miss. 697, 26 So. 691; so also the beneficiary will be defeated by equitable defenses inherent in the contract with the promisee, such as fraud, *Green* v. *Turner* (C. C. A. 1898) 86 Fed. 837; see *Wise* v. *Fuller,* (1878) 29 N. J. Eq. 257; *Arnold* v. *Nichols* (1876) 64 N. Y. 117; mistake, see *Wheat* v. *Rice* (1884) 97 N. Y. 296; *Green* v. *Stone* (1896) 54 N. J. Eq. 387, 34 Atl. 1099; or failure or want of consideration. *Dunning* v. *Leavitt* (1881) 85 N. Y. 30. On the other hand, defenses like release or rescission, which arise subsequently and exist entirely apart from the contract, are not available against the beneficiary, especially if he has already acted on the promise. *Waterman* v. *Morgan* (1888) 114 Ind. 237, 16 N. E. 590; *Knowles* v. *Erwin* (N. Y. 1887) 43 Hun 150, *aff'd.* 124 N. Y. 633, 28 N. E. 759; *Gifford* v. *Corrigan* (1889) 117 N. Y. 257, 22 N. E. 756. In the instant case both the action and the defense set up spring from the time of the original contract and hence the dissenting judges appear correct in insisting that it was part of the plaintiff's case to prove the happening of the condition.

DOMICILE—EXTRA-TERRITORIAL PRIVILEGES AS AFFECTING ITS ACQUISITION.—An English subject settled permanently in Egypt and married there. While temporarily in England his wife sued for divorce in an English court. The husband filed a plea to the jurisdiction of the court on the ground that his domicile was in Egypt. Under the system of extra-territoriality in force in Egypt, British subjects were not subject to the jurisdiction of the Turkish courts, but were to sue and be sued in the British Consular Courts, which had, however, no matrimonial jurisdiction. The trial court overruled the plea, and the Court of Appeal, in affirming the judgment, held it impossible in point of law for a British subject to acquire an Egyp-

tian domicile. The House of Lords, however, reversed this decision and *held* it to be a question of fact. While there is a presumption against the acquisition by a British subject of a domicile in Egypt, its strength has been greatly diminished since that country became a British protectorate. *Casdagli* v. *Casdagli* (1918) 120 L. T. 52.

For a discussion of the decision of this case by the Court of Appeal, see 18 Columbia Law Rev. 467. The holding of the House of Lords is notable, in view of the extreme reluctance of the English courts to imply an abandonment of a domicile of origin. As the decision in the principal case left the wife remediless, it might be questioned whether, in cases like the present, where the consular jurisdiction is limited, a more just result would not be reached by separating the domicile and holding that there can be a British domicile for certain purposes and an Egyptian domicile for others.

JUDGMENTS—SUBSTITUTION DURING TERM—ABUSE OF DISCRETION.—In an action for divorce, judgment was announced in open court denying both parties a decree, and was so entered, but, on the last day of the term without the presence or knowledge of the husband's attorney and knowing that he would not be able to be present, the court directed the clerk to erase this judgment and to enter in its place a judgment granting a divorce to the wife. *Held,* this action was an abuse of the court's discretionary powers over judgments rendered during the term. *Livingston* v. *Livingston* (Ind. 1918) 121 N. E. 119.

During the term at which they were rendered, a court may amend, correct, or modify its judgments as may in its discretion seem necessary to promote justice. 1 Black, Judgments (2nd ed.) § 153; *Jones* v. *Garage Equipment Co.* (1915) 16 Ga. App. 596, 85 S. E. 940. And this discretion includes power to supersede, revoke, or vacate a judgment. *Paine* v. *O'Donnell* (1915) 191 Mo. App. 300, 178 S. W. 873. After the expiration of the term there is no such discretionary power except as to mere matters of form. *United States* v. *Mayer* (1914) 235 U. S. 55, 35 Sup. Ct. 16. The reason for the distinction is a practical and necessary one, *Simpkins* v. *Parsons* (1915) 50 Okla. 786, 151 Pac. 588, and during the term, while the parties are before the court and the proceedings are *in fieri,* there is little likelihood of an abuse of such discretion. 1 Black, *op. cit.* § 153. The rule is invoked to correct clerical mistakes, or omissions, *Sugg* v. *Thornton* (1888) 73 Tex. 666, 9 S. W. 145, and may also be employed to correct a mistake of law by the court. *In re Hathorn's Will* (N. J. 1916) 97 Atl. 262; *Wolmerstadt* v. *Jacobs* (1883) 61 Iowa 372, 16 N. W. 217. Like other discretionary powers, however, it is subject to abuse, see *Jones* v. *Garage Equipment Co., supra; Poff* v. *Lockridge* (1908) 22 Okla. 462, 98 Pac. 427, and should never be employed so as substantially to prejudice a party in his rights, *Utah Commercial & Savings Bank* v. *Trumbo* (1898) 17 Utah 198, 53 Pac. 1033, and it would follow that the party to be affected adversely by the change should be properly before the court, *cf. Barnes* v. *Bruce* (Okla. 1917) 165 Pac. 405, or have notice of the intended change before it is made. See *Midyett* v. *Kerby* (1917) 129 Ark. 301, 195